PUBLIC PROSECUTOR

v.

TAN KAH PIN

HIGH COURT, TAWAU
TUAN IAN H.C. CHIN JC
[CRIMINAL APPEAL NO. T.(41) 14 OF 1991]
8 SEPTEMBER 1992

INTERPRETATION OF STATUTES: Offence of exhibiting films without a certificate of approval - Preliminary objection by Accused - No prescribed regulation for the certificate of approval - Whether Accused may be found guilty of the offence in the absence of such regulation - Construction of the Films (Censorship) Act 1952 (Revised 1971) Act 35.

The Accused was charged under s. 15(1)(a) of the Films (Censorship) Act 1952 whereby it is an offence to exhibit any film without a certificate of approval. Counsel for the Accused raised a preliminary objection on the ground that there was no regulation to prescribe the issue of the certificate. The learned Magistrate accepted the argument of Counsel and discharged the Accused. The prosecutor appealed against the discharge, contending that the Magistrate by doing so, had indirectly declared s. 15(1)(a) of the said Act void and therefore acted in excess of jurisdiction.

Held:

[1] The court has no authority to limit a statute or put upon the words of a statute a limitation not in accordance with the ordinary meaning of the word.The courts function is to ascertain the plain meaning of the words used in the statute.

[2] Section 15 of the said Act clearly states there must not be an exhibition of films without a certificate of approval issued under s. 9(2) or 9A(2) of the Act. Any infraction is an offence.

[3] The court's duty is to give effect to these words even if no subsidiary legislation exists providing for the application of such a certificate. Otherwise, the Act would be rendered ineffective and pointless.

[Appeal allowed. Order of discharge set aside. Case remitted to the Magistrate Court to be heard on merits.]

Cases referred to:

PP v. Goh Kee Chuan [1967] 1 MLJ 174 (cit)
A-G & Board of Education v. West Riding of Yorkshire, Exp Grenside [1907] AC 29 (refd)
R. v. Mansel Jones [1989] 23 QBD 29 (refd)
Woodward v. Warts [1853] 2 E&B 452 (refd)
Re Norman [1986] 16 QBD 673 (refd)
Smith Kline & French Laboratories Ltd. v. Salim (M'sia) Sdn. Bhd. [1989] 2 MLJ 380 @ 382 / [1989] 2 CLJ 228 (refd)

Legislation referred to:

Films (Censorship) Act 1952 (Revised 1971) Act 35, ss. 9(2), 9A(2), 15(1)(a)

For the Public Prosecutor - N. Rajendran
For the respondent - Frederick Lo Ming Yong; M/s. Chong & Pang

JUDGMENT

Ian H.C. Chin JC:

I. History of case

This is an appeal against the order of the learned Magistrate (made on the 8 June 1992 in Criminal Case No. MC 184/90 in the Magistrate Court of the First Class, Tawau) discharging the respondent after upholding a preliminary objection canvassed by Counsel for the respondent.

The respondent was in the lower Court charged as follows:

> That you on the 7th day of November 1985, at about 12.00 noon, at premises No. 909 Brilliant Enterprise Sdn. Bhd. at Jalan Habib Hussin, in the District of Tawau, in the State of Sabah, did exhibits films, to wit , 8 Video Tapes entitled:
>
> (1) New One Armed Swordsman - (Four Tapes)
> (2) The Buddha Assasination
> (3) Nariobi Affair
> (4) Night of The Conet and
> (5) Ninja Warrior
>
> without a certificate of approval issued under s. 9(2) of the Cinematiograph Films (Censor-Ship) Act 1952 (Revised 1971) Act 35, and that you have thereby committed an offence punishable under s. 15(1)(a) of the same Act.

II. Preliminary objection

In the Magistrate's Court and before the prosecution opened its case, Counsel for the Accused (respondent) contended that the certificate of approval must be prescribed by regulation and since there is no such regulation

prescribing such certificate, the Accused therefore cannot be guilty of an offence under s. 15(1)(a) of the Films (Censorship) Act even if the Accused had exhibited films without being issued a certificate of approval under s. 9(2) of the Act. The learned Magistrate apparently accepted the argument when she said:

> Since in the absence of such regulation on the issuance of certificate B, I hereby allow the preliminary objection made by the defence Counsel and I hereby discharged the Accused and the bail be returned. The Act I am referring to is Films (Censorship) Act 1952 Act 35).

III. Grounds of appeal

The Public Prosecutor appealed against the order of discharge. The learned DPP contended that irrespective of whether there is any regulation to prescribe the issue of certificate, s. 15(1)(a) of the Film (Censorship) Act 1952 (Revised 1971) makes it an offence to exhibit a film without a certificate. The learned DPP further contended that it is outside the jurisdiction of the learned Magistrate to, presumably indirectly, declare the said s. 15 void and of no effect. The learned DPP lastly contended that the learned Magistrate erred in discharging the respondent without hearing the prosecution's case and cited *Public Prosecutor v. Goh Kee Chuan* [1967] 1 MLJ 174 which I, when it was cited, ruled irrelevant to this case because the Court here is not concerned with any order of acquittal, as in that case, but only with the order of discharge.

IV. Principles of law of interpretation of statute

The functions of the Court is simply to ascertain the meaning of the Act as it stands. See the judgment of Lord Loreburn C in *A-G & Board of Education v. West Riding of Yorkshire, Ex p Grenside* [1907] AC 29. If the words of a statute are plain, you give effect to them (per Lord Coleridge CJ in *R v. Mansel Jones* [1989] 23 QBD 29. I would also quote from the case of *Woodward v. Watts* [1853] 2 E&B 452 -

> The golden rule in the construction of an Act of Parliament is to put on the words of it their natural and grammatical construction although that may lead to some inconvenience, absurdity, or mischief; it being for the judges to construe Acts of Parliament; and not to legislate, and for the legislature to provide a remedy when one is wanted.

The Court has no authority to limit a statute or put upon the words of a statute a limitation which is not according to the ordinary meaning of the words. See *Re Norman* [1986] 16 QBD 673. One final principle of law which is relevant is that as far as possible a statute should not be read to give it an effect such that it is a pointless piece of legislation. See *Smith Kline & French Laboratiores Ltd. v. Salim (Malaysia) Sdn. Bhd.* [1989] 2 MLJ 380, at page 382.

To summarize, all that the Court has to do is to consider what is the plain meaning of the words of the statute and in this case the Films (Censorship) Act, 1952.

V. Films (Censorship) Act, 1952

This Act is, according to the preamble, in relation to the censorship of films for which purpose a Board of Films Censors is established under s. 3 of the Act. The section that deals with the prohibition and authorization of films is s. 9. Section 9A deals with classification of films and s. 15 provides the penalties. For ease of reference the sections are reproduced here:

> *9. Prohibition and authorization of films.*
>
> (1) After the presentation of a film for the purpose of censorship the Board may:
>
> (a) refuse to authorize the exhibition of the film in Malaysia;
> (b) approve the film for exhibition in Malaysia with such alterations or excisions as it may require; or
> (c) approve the film for exhibition in Malaysia without alteration or excision;
>
> Provided that in any case to which paragraph (a) or (b) applies the Board shall thereupon furnish to the owner in writing its reasons for the refusal or for requiring the alterations or excisions.
>
> (2) Where any films is approved for exhibition in Malaysia the Board shall, where the required alterations or excisions, if any, have been made, issue in respect thereof to the owner such certificate as may be prescribed by the Minister authorizing the exhibition of that film in Malaysia and such certificate shall at all times accompany the film.
>
> (3) If the Board considers it should refuse the film, under paragraph (a) of subsection (1) but for its educational, historical or

cultural value, it shall submit such film to the Assessment Committee set up under s. 19A for the Committee's decision.

9A. *Classification of films.*

(1) The Board may, when authorizing the exhibition of any film under section 9(2), classify the film in such manner as it may think fit and the Minister may approve classification under which films may be classified under this subsection.

(2) Where any film is classified under subsection (1), the Board shall issue to the owner such certificate as may be prescribed to be issued in respect of films of that classification and such certificate together with any notice that the Board may require to be displayed in connection with the film shall be prominently displayed on the premises where the film is exhibited.

(3) Any person who exhibits or causes to be exhibited any film classified under subsection (1) in contravention of subsection (2) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

15. Penalties.

(1) Any person who exhibits, sells, hires or distributes or causes to be exhibited, sold, hired or distributed any film -

(a) in respect of which a certificate has not been issued under ss. 9(2) or 9A(2);
(b) in respect of which the certificate issued under ss. 9(2) or 9A (2) has ceased to be valid under ss. 13 or 14;
(c) which, since the certificate was issued in respect thereof, has been altered or tampered with in any way; or
(d) in breach of a condition imposed under s. 25(2),

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

(3) Any Inspector of Films may at all reasonable times enter any premises in which any film is being or is about to be exhibited any may examine any such film and if on such examintion he has reasonable grounds for believing that an offence under subsection (1) or under s. 9A(3) has been or is about to be committed in respect of any such film he may seize the same.

VI. Conclusion.

The words of s. 15 of the Act are plain and very clear - there must not be any, *inter alia*, exhibition of films without a certificate issued under ss. 9(2) or 9A of the Act. Any infraction of the section is an offence. That is the plain meaning of s. 15 of the Act and to this the Court must give effect. If there were no subsidiary legislation providing for the application or issuance of the certificate it only means inconvenience for the public but this does not make the said ss. 9, 9A or 15 of the Act bad or invalid. It is for the legislature to rectify if ever there is such problems. There is therefore no substance in the submission of Counsel for the respondent in their so called "preliminary objection". Sustaining the preliminary objection means turning the Act into a pointless piece of legislation and this the Court should not, in this case, do because it cannot be justified. I therefore allow the appeal of the prosecution and set aside the order of discharge of the learned Magistrate and I direct that the learned Magistrate shall hear the case on its merit, that is, let the prosecution prove its case. The prosecution should take care in the way they type the charge because the charge as it stands contains a wrongly worded Act ("Cinematograph Films (Censorship) Act" instead of "Films (Censorship) Act") and it has atrocious grammar, to wit, "did exhibits".